

# Conducting Your Business Lawfully

A Primer for Utah Elected and Appointed Officials and Employees

## Utah Statutes of Accountability

- Open and Public Meetings Act (OPMA)
- Government Records Access and Management Act (GRAMA)
- County Officials and Employees Disclosure Act
- Prohibiting Employment of Family Members
- Offenses Against the Administration of Government

# Meeting Rules and Procedures

Utah Statutes provide latitude for public bodies to write their own rules of conduct for meetings:

- U.C.A. 10-3-6 for municipalities
- U.C.A. 17-53-202 for counties

***But what the Legislature giveth, the Legislature taketh away...***

- Utah Open & Public Meetings Act
- Utah Government Records Access Management Act
- Utah Public Officials Ethics & Disclosure Laws

## OPMA U.C.A. 52-4

The Utah Open & Public Meetings Act Prescribes

- What bodies are subject to the act;
- What meetings must be open to the public;
- When meetings of public officials can be closed;
- Meeting notice requirements;
- Agenda requirements;
- Minutes and recording requirements; and
- Penalties for violations

## OPMA Big Picture

The premise of the Open Public Meetings Act is:

**All meetings are open to the public, with limited and specific exceptions.**

*Governments exists to aid in the conduct of the peoples business, and they should take their actions openly and conduct their deliberations openly.*

## Public Meetings

To know what a "Public Meeting" is, you need to look at the definitions-

**"Public Body"** means: any administrative, advisory, executive, or legislative body which consists of **two or more persons**, is **created by law or ordinance**, which **spends or is supported by taxes**, and is **vested with the authority to make decisions** regarding the public's business.

**"Meeting"** means: the **convening** of a **public body**, with a **quorum**, whether in person or electronically, for the purpose of **discussing**, **receiving comments from the public about**, or **acting upon** a matter over which the public body has **jurisdiction or advisory power**.

"Meeting" does not mean a chance or social meeting.

Exceptions for P&Z bodies:

- Purely administrative meetings: and
- Closed meetings.

## Closed Meeting

**You cannot simply hold a “Closed Meeting”, you must “close” an open meeting, and only for one of the specific reasons enumerated in statute. The pertinent reasons for P&Z bodies are:**

1. Discuss the character, professional competence, or physical/mental health of an individual. (sometimes referred to as the personnel exception, but be careful with that!)
2. Discuss pending or reasonably imminent litigation. (Best to have your attorney in these closed sessions)
3. Discuss the purchase, exchange, lease or sale of real property if public discussion of the transaction would disclose the appraised or estimated value of the property under consideration, or prevent the public body from completing the transaction on the best possible terms...

**A SITE VISIT IS NOT A REASON FOR A CLOSED MEETING!**

Any action that results from discussion in a closed meeting in violation of the act can be nullified or voided.

## Closing a Meeting

- DO NOT THINK IN TERMS OF A CLOSED MEETING, THINK ABOUT IT AS THE PORTION OF AN OPEN MEETING THAT IS CLOSED.
- Must begin as a valid open meeting
- Motion to close with 2/3 members present voting in favor
- All matters discussed in closed session must be within the specific exceptions that permits closure of the meeting
- Closed portions of meetings are for discussion only, any actions should be taken once the meeting is reopened. (A public body may not make motions or vote to take action in a closed portion of a meeting.)



## Notice Requirements

ALL “Public Meetings” must be properly noticed, which means:

- Annual notice of schedule of meetings; and
- Notice at least 24 hours in advance of each meeting.

Provide notice at customary meeting location, to local media, and on state public notice website

24 hour meeting notice must include the date, time and place of the meeting along with an **agenda**.

## Meeting Agenda

The agenda must list each item to be discussed at the meeting, with **reasonable specificity**.

An issue that is not on the **noticed agenda** cannot be acted upon (so it is best not to discuss any item not on the agenda, as doing so may violate the OPMA and is very likely a violation of others due process rights, which will lead to a lawsuit)

## Items Not on the Agenda

- Potential violation of OPMA
- Potential finding of “public clamor” by courts if administrative item
- Potential violation of others due process rights if quasi-judicial item
- Potential for slanderous remarks

## Public Meeting v Public Hearing

- Public must be allowed to “observe” a public meeting
- Public must be allowed to “participate” in a public hearing
- There is no right to the public to participate (speak) in a public meeting, that is left to the sole discretion of the body and its chair.
- If public wants to provide input on a legislative item, schedule a public hearing, at which all persons will be given reasonable ability to speak to the issue.

## Unnoticed Items in Meeting

- Chair cannot allow:
  - Discussion of item elsewhere on agenda;
  - Deliberation by commission members; or
  - Action of any type on the issue
- Limited discussion, no deliberation and no action = frustration
- Publicize process for placing an item on the agenda to assure all items are properly noticed under the Act.

## State Auditor's Cheat Sheet

### Public Meetings vs. Public Hearings

#### Open & Public Meetings

- The majority of a governing body meets to discuss, or act upon, the business of the entity.
- Includes workshops or executive sessions.
- Does not include chance or social meetings.

#### Public Hearings

- Portion of an open meeting at which members of the public are provided with a *reasonable* opportunity to speak (speaking time may be limited)
- Required when an entity imposes or increases a tax or fee, or adopts a budget.



Office of the  
State Auditor

Introduction

Types of  
Meetings

Notice  
Requirements

Record  
Requirements

# State Auditor's Cheat Sheet

## Notice Requirements

Requirement	Regular Meeting	Public Hearing
Media	Must <u>notify</u> at least one newspaper or a local media correspondent. The newspaper can choose whether or not to publish the notice. The entity is not required to pay for the publication of regular meeting notices.	Must <u>publish</u> notice in at least one issue or a newspaper. If the newspaper requires payment to publish the notice, then the entity must pay the fee. If a newspaper of general circulation is not available, then written notice must be posted in three public places within the entity's boundaries.
Physical Posting	Post written notice at the principal office of the governing body, or if no such office exists, at the building where the meeting is to be held.	(Same as Regular Meeting)
Digital Posting	Must post on the Public Notice Website ( <a href="http://pmn.utah.gov">pmn.utah.gov</a> ).	(Same as Regular Meeting)
Number of days	At least <u>24 hours</u> before meeting.	Generally, at least <u>seven days</u> prior to the hearing.



## Emergency Meetings

- Must be a legitimate emergency, not just that you forgot the advance notice requirements.
- Must provide "best notice practicable" of the time, location and topics to be considered.
- An attempt to contact all governing body members must be made.
- A majority of the governing body members must approve the meeting.
- Should only discuss and conduct business related to the emergency.

## Minutes

Minutes must be taken for ALL Open Public Meetings.\*

- \*Now a recording can serve as the minutes of a meeting.
- But minutes are supposed to include copies of all materials presented to the body..?

Must include date, time, place, members of the public body present, the agenda, the substance of all matters discussed, a summary of comments made, the names of the members of the public commenting and the substance of their comments, and any other information which is requested to be placed in the minutes.

Draft minutes must be made available within a reasonable time of the meeting, and approved minutes available within 3 days of approval by the body.

Minutes need to be specific and detailed, but do not need to be a transcription of the meeting.

## Minutes of a Closed Meeting

- Written minutes are optional.
- If written minutes are taken, they must include date, time, place, members present and the names of others in attendance if doing so would not undermine the purpose for closing the meeting.
- Closed meeting minutes are considered protected documents under GRAMA.

## Recordings

ALL Open Public Meetings must be recorded.

Most closed meetings must be recorded also. (those that are not required to be recorded must have a signed affidavit.)

Recordings may not be edited or altered.

Recordings must be labeled to be easily identifiable

Recording must be made available to the public within 3 days of the meeting.

## Electronic Meetings

- Electronic meetings can be conducted using telephone, texting, email, or otherwise.
- Entity must adopt a rule or ordinance permitting electronic meetings.
- Must identify an “anchor location”, which is usually the body’s normal meeting place.
- Notice of meeting must include information on electronic arrangements.
- “Anchor location” must accommodate the public listening in or, where permitted, **participating**.

## OPMA Training

- The presiding member of a public body is required to ensure that all members of the public body are provided training **annually**.
- The State Attorney General is responsible to provide annual explanation of changes to the Open & Public Meeting Act to all public bodies.

(Make sure your body is registered so you receive notices.)

The Utah State Auditor's Office provides on-line Open Public Meeting Act training with a certificate to document training has been completed at

<http://training.auditor.utah.gov/courses/introductory-training-for-municipal-officials>

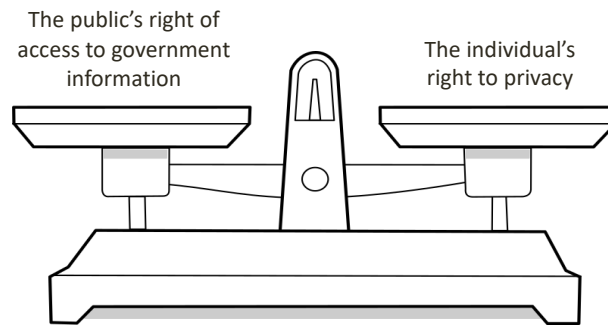
## GRAMA Big Picture

Similar to the OPMA, GRAMA creates a presumption that all government records and documents are open and available to the public, with certain limited exceptions.



No... its the  
Governmental  
Records Access and  
Management Act!

## GRAMA's Balancing Act



## GRAMA's 4 Main Features

GRAMA requirements can be broken down into four general responsibilities:

1. Classification of records kept;
2. Maintain Records under a Retention Schedule;
3. Provide records access to public and media; and
4. Provide an appeal or review process for dissatisfied persons.

Classifying records, maintaining records under a formal retention schedule, and responding to GRAMA requests are all complicated matters – and should be handled by your agency's Records Officer.



# Ethics

Municipal Officers and Employees' Ethics Act

County Officers and Employees' Disclosure Act

Public Officials and Employees' Ethics Act

## Prohibits

- Use of Office for Personal Gain
- Disclosure or use of Protected Information
- "Accepting" "Gifts"

## Requires Disclosure

- Assisting in transaction with agency
- Interest in regulated business
- Interest in business doing business with agency
- Investment creating conflict with duties

## Penalties

- Removal from office/employment and misdemeanor to felony

## Accepting a Gift or Loan

May not knowingly receive, accept, take, seek, or solicit, directly or indirectly for himself or another a gift or loan that tends to influence the officer in the discharge of their official duties.



## Accepting a Gift or Loan

May not **knowingly** receive, accept, take, seek, or solicit, directly or indirectly for himself or another a gift or loan that tends to influence the officer in the discharge of their official duties.

If someone makes a charitable contribution in your name without your knowledge, you are not in violation.



## Accepting a Gift or Loan

May not knowingly **receive, accept, take, seek, or solicit**, directly or indirectly for himself or another a gift or loan that tends to influence the officer in the discharge of their official duties.

If you ask for it, you are in violation.



## Accepting a Gift or Loan

May not knowingly receive, accept, take, seek, or solicit, **directly or indirectly** for himself or another a gift or loan that tends to influence the officer in the discharge of their official duties.

If you have someone else ask for it, you are in violation.



## Accepting a Gift or Loan

May not knowingly receive, accept, take, seek, or solicit, directly or indirectly **for himself or another** a gift or loan that tends to influence the officer in the discharge of their official duties.

If you ask that the gift or loan be given to someone else, you are in violation. The “someone else” does not need to be a family member. It could be a friend, business partner or a corporation.

## Accepting a Gift or Loan

May not knowingly receive, accept, take, seek, or solicit, directly or indirectly for himself or another a **gift or loan** that tends to influence the officer in the discharge of their official duties.

A gift would include cash, property, meals, trips and other items commonly considered "gifts". While not specifically defined in Title 17, "Economic benefit tantamount to a gift" is defined in Title 67 to include "compensation received for private services rendered at a rate substantially exceeding the fair market value."

"Economic benefit tantamount to a gift" is considered to include "a loan at an interest rate substantially lower than the commercial rate."

## "Not a Gift" defined

"Gift" does not include:

- An occasional non-pecuniary gift having value less than \$50;
- An award publicly presented;
- A bona fide loan made in the ordinary course of business; or
- A political campaign contribution.



## Penalties

**In addition to any other provision of law;**

- Shall be removed from office or employment; and
- Class A misdemeanor to Felony dependent on extent of violation.

The ethics statutes do not apply if the official or employee is chargeable for the same conduct, under Section 76-8-105.

## Thank You!

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